

MALAYAN UNION REPORTS.

MUHIDIN BIN A. KADER v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Jobling, J.) September 8, 1947]

Interpretation of Statutes—Long title of enactment inconsistent with contents of enactment—Onus of proof—Johore Trade and Customs Enactment (Enactment No. 80) s.s. 39 (1) (f) and 45—Johore Excise Enactment, Enactment No. 102 S. 58.

In this case the facts were that a certain Indian was found on the road with two bundles. An examination by the customs officers disclosed that the bundles contained cloth which the Indian said belonged to a friend of his. As the cloth was suspected to be uncustomed, the Indian and the cloth were taken to the police station. Later the accused with another man claimed that the cloth was theirs. Police investigation followed and the accused was subsequently charged with having knowingly conveyed uncustomed goods, with intent to defraud the Government of the duties thereon, an offence under s. 39 (1) (f) of the Trade and Customs Enactment. He was convicted by the District Judge and appealed to the Supreme Court.

Held, (1) that s. 58 of the Johore Excise Enactment does give power to the Customs Officers to seize goods in respect of which there has been committed, or there is reasonable cause to suspect that there has been committed, an offence against the Customs Law; (2) that, as the accused was found to be in possession of goods suspected of being uncustomed, the onus of proof that the goods were customed were on the accused; (3) that, as the accused had not discharged this onus of proof he was rightly convicted under s. 39 (1) (f) of the Trade and Customs Enactment.

Semble. If the words of a statute are unequivocal they must receive their full effect even though they appear to go far beyond the general purpose of the statute as set out in its title and preamble.

Case referred to:—

- (1) *A. G. v. Margate Pier Co.* (1900) 69 L.J. Ch. 331.

CRIMINAL APPEAL FROM DISTRICT JUDGE.

I. A. Siriwardhene for the Appellant.

W. M. McCall Crown Counsel for the Respondent.

Jobling, J. in an oral judgment said:— This is a case in which the accused is charged with having knowingly conveyed uncustomed goods, with intent to defraud the Government of the duties thereon, an offence under section 39 (1) (f) of the Trade and Customs Enactment No. 80, Vol. II, Laws of Johore.

The evidence is that a certain Indian was found on the road with two bundles. An examination by the customs officers disclosed that the bundles contained cloth which the Indian said belonged to a friend of his. As the cloth was suspected to be uncustomed, the Indian and the cloth were taken to the police station. Later the accused with another man claimed that the cloth was

theirs. Police investigation followed and the accused was charged. He was convicted by the District Judge and has appealed to this Court.

The first point to consider in this case is whether the customs officers had the power to seize these goods. I was referred to section 58 of Enactment No. 102. That section authorises seizure of goods in certain circumstances. It reads: "All goods or articles in respect of which there has been committed, or there is reasonable cause to suspect that there has been committed, any offence against this Enactment or any other written law relating to Excise or Customs . . . may be seized". This section appears in the Excise Enactment, which has for its long title the following "To amend and re-enact the law relating to excise and to the sale of intoxicating liquor" and the insertion of power to seize goods under a Customs law seems inconsistent with this long title.

I have, however, referred to *A. G. v. Margate Pier Co.*⁽¹⁾ and find that the law as to the effect of a long title which is inconsistent with the contents of its enactment is given in that case as follows:—

That where there is no doubt as to the construction to be put upon the words of a section and though it clearly exceeds both the title and preamble the section must be given its full construction.

In view of that ruling I hold that this section does apply to goods in respect of which there has been committed, or there is reasonable cause to suspect that there has been committed, an offence against the Customs law. I can see no other way in which to read the explicit words of this section.

That being so, I have been referred to section 45 of the Trade and Customs Enactment No. 80, which provides:—

If, in any prosecution in respect of any goods seized for non-payment of duties . . . any dispute shall arise as to whether the customs duties have been paid in respect of such goods . . . then and in every such case the proof thereof shall be on the defendant in such prosecution.

In this case, the accused is charged under section 39 (1) (f) and section 45 throws the onus of proof on the accused. It is therefore only necessary for me to examine this case from this point of view.

There has been a great deal of unnecessary evidence produced by the Prosecution, but there is evidence to show that the accused admitted he was the owner of these goods and that he has given an explanation of how he came by them in order to show that they were not uncustomed. This explanation has proved to be false. He produced three receipts to the customs officers showing that he purchased certain goods similar to those which he claimed as owner, from three dealers in

Johore Bahru. These dealers gave evidence that they did not sell these goods. They said the receipts produced were receipts issued by them in respect of other goods. I see no reason to disagree with the District Judge that these witnesses were honest witnesses and that their evidence is true. It has been argued for the Defence that these dealers gave false evidence because they feared they might get into trouble with the Customs if they admitted having sold these goods, as they would then be called upon to account for the customs duties. I see no reason to accept this view of the Defence.

The result is that the accused has been found to be in possession of goods suspected of having been uncustomed, and he has not discharged the onus of proving that these goods were customed.

The appeal is dismissed and the conviction and the sentence are confirmed.

Appeal Dismissed.

MEK BINTE AWANG v. CHE MAS BINTE AWANG.

[Crim. Revision (Taylor, J.) September 24, 1947]

Criminal Procedure Code Ss. 66a, 173a, 293 and 294 — Binding Over — Order of "Caution and Discharge" — Personal Opinion of Magistrate — Penal Code, S. 323.

The Magistrate on a private summons for voluntarily causing hurt convicted both the accused and complainant of affray and cautioned and discharged them. The case was submitted by the Public Prosecutor to the High Court with a view to revision.

Held, on review of the case that the Magistrate had no jurisdiction to convict the complainant, that in any event he had failed to make clear to the parties the effect of his decision, that he had improperly supplemented the evidence from his personal opinions and that the conviction must be set aside.

Semle. A Complainant cannot be convicted, but may by the proper procedure be bound over. This power should be used sparingly and carefully.

The expression "Cautioned and Discharged" is not authorised by law and it is not satisfactory in practice because it leaves the matter in doubt whether the Court actually found the accused guilty of an offence or not.

REVISION.

Parties in person.

Taylor, J. : — This is a revision of the proceedings before a Magistrate on a private summons for voluntarily causing hurt under Section 323 of the Penal Code.

Both parties are married women living in the same kampong. The complainant is aged about 25 years and the accused still in her teens. There has been jealousy between them over family affairs.

The complainant's story, which was supported with consistent detail by two witnesses, was that while she was bathing at the well near her house, the accused came and assaulted her; all three testified that the accused was alone.

The accused admitted a scuffle but stated that it took place on the public road and that the complainant provoked the incident by throwing water on her. This was supported by one witness, her niece, aged about 13, who did not see the two witnesses for complainant.

At the close of the case the learned Magistrate wrote :—

"According to the evidence both accused and complainant guilty of affray. Cautioned and discharged".

The complainant was dissatisfied and sent what is in substance a petition of appeal to the Public Prosecutor who submitted the case to the High Court with a view to revision.

In his Grounds of Judgment the Magistrate says that among the local Malays especially women, whenever one hits another with the hand, the other will automatically challenge and thus commit an affray; he has seen such occurrences many times. From the evidence he found it difficult to conclude which side was telling the truth but by putting the evidence of both sides together he found that they had committed an affray and, therefore, convicted them both, the complainant as well as the accused. But taking into consideration that the fight was not serious and neither of the women suffered any injury they were cautioned and discharged.

The Magistrate has recorded the evidence for both sides, including the cross examination, very clearly and, I have no doubt, accurately but his determination of the case is not in accordance either with the principles of justice or with legal procedure. It is quite clear that, feeling some doubt about the case, he substituted his own opinion of what was probable for the evidence. This was certainly improper. It is, of course, right and necessary that Magistrates should apply their own knowledge and experience to the weighing and interpretation of evidence, but that is quite a different thing. The judgment must be found on the actual evidence.

The prosecution must prove every fact necessary to establish the truth of the charge and this applies equally to private summons cases and official prosecution. If, at the close of the evidence, the Magistrate was not convinced that the complainant had established her case he should have given the accused the benefit